Kesatuan Kebangsaan Pekerja-Pekerja Bank v Maybank Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02–439–02 OF 2013
MOHD YUNUS, UMI KALTHUM AND ABDUL RAHMAN SEBLI JJCA
3 NOVEMBER 2015

Labour Law — Employment — Wages — Action by trade union — Collective agreement — Categorisation of temporary employees — Employees offered employment on contract basis for six months — Placed under category of 'support clerks' — Whether there was such category — Reading of collective agreement

This appeal concerned a dispute between the respondent ('Maybank') and the appellant over the categorisation of 40 temporary employees employed by the former in November 2007. They were offered employment on a contract basis for six months and were placed under the category of 'support clerks' with basic pays ranging from RM995 to RM1,300, depending on their qualifications and experience. Their contracts expired in or about May or June 2008. The appellant's contention was that there was no such category as 'support clerks' as the only categories were those that were specified in article 14(2) of the collective agreement, namely non-clerical, clerical or special grade. By putting them under the category of 'support clerks', they would not be paid in accordance with the salary structures as specified in Appendix 1A and Appendix 1B of the collective agreement. Some of them were paid a flat rate of RM1,300 per month, which according to the appellant contravened article 14(2) of the collective agreement. The appellant then lodged a complaint to the Industrial Court but before the proceedings started, a new collective agreement effective 1 January 2006 to 31 December 2008 was signed between the appellant and Maybank. The hearing of the appellant's complaint subsequently proceeded in the Industrial Court. The Industrial Court gave an award in favour of the appellant, holding that Maybank was in breach of article 14 of the collective agreement. Dissatisfied with the decision, Maybank applied to the High Court by way of judicial review to quash the Industrial Court's award. The application was allowed by the judge and accordingly the award of the Industrial Court was quashed. Hence, the present appeal.

Held, allowing the appeal with costs of RM10,000:

(1) When the appellant pleaded for article 14 to be interpreted, it necessarily meant that Appendix 1A and Appendix 1B of the collective agreement were to be interpreted as well as these two appendices were intertwined with article 14. Article 14 cannot be interpreted in a vacuum, without

considering Appendix 1A and Appendix 1B. Article 14(2) makes specific reference to Appendix 1A and Appendix 1B (see para 11).

(2) When the Industrial Court interpreted Appendix 1A and Appendix 1B, in effect it was interpreting article 14. Therefore the Industrial Court did not commit any error of law as it was within the four corners of the appellant's pleaded case. In its award the Industrial Court had clearly held that the respondent failed to comply with article 14 of the collective agreement (see para 11).

(3) Rule 24A of the Industrial Court Rules 1967 provides that Form S must be filed prior to commencing an action for the non-compliance of any collective agreement. Thus, when the appellant filed Form S seeking the court's interpretation of articles 3 and 14, it was based on the collective agreement which was in existence then, which was collective agreement Cog No 12 of 2006 and not collective agreement cog No 158 of 2008 (see para 11).

(4) There was no need for the Form S to be amended as decided by the judge because the provisions that were to be interpreted were the provisions of the collective agreement which were in existence at that time, that was, collective agreement cog No 12 of 2006. The appellant should not be expected to withdraw the Form S and file a new one with a new complaint under collective agreement cog No 158 of 2008 just because collective agreement cog No 12 of 2006 had been replaced (see para 11).

[Bahasa Malaysia summary

Rayuan ini adalah berkaitan pertikaian di antara responden ('Maybank') dan perayu terhadap kategorisasi 40 pekerja sementara yang diambil bekerja oleh perayu pada bulan November 2007. Mereka ditawarkan pekerjaan atas dasar kontrak untuk enam bulan dan ditempatkan di bawah kategori 'support clerks' dengan bayaran dasar antara RM995 hingga RM1,300, bergantung ke atas kelayakan dan pengalaman mereka. Kontrak mereka tamat pada atau kira-kira bulan Mei atau Jun 2008. Hujahan perayu adalah bahawa tidak terdapat kategori seperti 'support clerks' kerana satu-satunya kategori adalah yang telah ditetapkan dalam artikel 14(2) perjanjian kolektif, iaitu bukan perkeranian, perkeranian atau gred khas. Dengan meletakkan mereka di bawah kategori 'support clerks', mereka tidak akan dibayar mengikut struktur gaji seperti yang ditetapkan dalam Lampiran 1A dan Lampiran 1B perjanjian kolektif. Sebahagian mereka dibayar kadar rata sebanyak RM1,300 sebulan, yang mana mengikut perayu melanggar artikel 14(2) perjanjian kolektif. Perayu kemudiannya membuat aduan kepada Mahkamah Perusahaan tetapi sebelum prosiding bermula, satu perjanjian kolektif berkuat kuasa dari 1 Januari 2006 hingga 31 Disember 2008 ditandatangani di antara perayu dan Maybank. Pendengaran aduan perayu kemudiannya diteruskan di Mahkamah Perusahaan. Mahkamah Perusahaan memberi award memihak perayu,

memutuskan bahawa Maybank memungkiri artikel 14 perjanjian kolektif. Tidak berpuas hati dengan keputusan tersebut, Maybank memohon kepada Mahkamah Tinggi melalui semakan kehakiman untuk membatalkan award Mahkamah Perusahaan. Permohonan dibenarkan oleh hakim dan dengan itu award Mahkamah Perusahaan dibatalkan. Maka, rayuan ini.

Diputuskan, membenarkan rayuan dengan kos sebanyak RM10,000:

(1) Apabila perayu memplidkan untuk artikel 14 ditafsirkan, ia semestinya bermaksud bahawa Lampiran 1A dan Lampiran 1B perjanjian kolektif ditafsirkan juga kedua-dua lampiran ini adalah berjalin dengan artikel 14. Artikel 14 tidak dapat ditafsirkan berasingan, tanpa mempertimbangkan Lampiran 1A dan Lampiran 1B. Artikel 14(2) membuat rujukan spesifik kepada Lampiran 1A dan Lampiran 1B (lihat perenggan 11).

(2) Apabila Mahkamah Perusahaan mentafsirkan Lampiran 1A dan Lampiran 1B, sebenarnya ia mentafsirkan artikel 14. Mahkamah Perusahaan oleh itu tidak melakukan apa-apa kesilapan undang-undang kerana ia dalam kes rayuan perayu. Dalam awardnya Mahkamah Perusahaan telah dengan jelas memutuskan bahawa responden gagal untuk mematuhi artikel 14 perjanjian kolektif (lihat perenggan 11).

(3) Peraturan 24A Peraturan-Peraturan Mahkamah Perusahaan 1967 memperuntukkan bahawa Borang S mesti difailkan sebelum memulakan tindakan untuk ketidakpatuhan apa-apa perjanjian kolektif. Oleh itu, apabila perayu memfailkan Borang S memohon tafsiran artikel 3 dan 14, ia didasarkan atas perjanjian kolektif yang wujud pada ketika itu, yang mana adalah perjanjian kolektif cog No 12 tahun 2006 dan bukan perjanjian kolektif cog No 158 tahun 2008 (lihat perenggan 11).

(4) Tiada keperluan untuk Borang S dipinda seperti yang diputuskan oleh hakim kerana peruntukan yang akan ditafsirkan adalah peruntukan perjanjian kolektif yang wujud pada masa tersebut, iaitu, perjanjian kolektif cog No 12 tahun 2006. Perayu tidak patut dijangka untuk menarik balik Borang S dan memfailkan yang baru dengan aduan baru di bawah perjanjian kolektif cog No 158 tahun 2008 kerana perjanjian kolektif cog No 12 tahun 2006 telah digantikan (lihat perenggan 11).]

Notes

For cases on wages, see 8(1) *Mallal's Digest* (5th Ed, 2015) paras 1639–1656.

Legislation referred to

Industrial Court Rules 1967 r 24A

Appeal from: Judicial Review Application No 25–159–07 of 2012 (High Court, Kuala Lumpur)

Ravi Nekoo (Susielan & Assoc) for the appellant.
Edwin Rajasooria (Abdul Jalil Mohamad with him) (Kamil Hashim Pury & Lim) for the respondent.

Abdul Rahman Sebli JCA:

[1] This appeal concerns a dispute between the respondent, Maybank Bhd ('Maybank') and the appellant, the National Union of Bank Employees over the categorisation of 40 temporary employees employed by the former in November 2007. They were offered employment on a contract basis for six months and were placed under the category of 'support clerks' with basic pays ranging from RM995 to RM1,300, depending on their qualifications and experience. Their contracts expired in or about May or June 2008.

[2] The appellant's contention was that there was no such category as 'support clerks' as the only categories were those that were specified in article 14(2) of the collective agreement, which stipulated as follows:

> (2) The Bank shall pay every temporary employee employed in the category of non-clerical, clerical or special grade a monthly salary as prescribed in the Salary Structure as per Appendix 1A and Appendix 1B.

[3] The collective agreement therefore provided for only three categories of temporary employees, that is, non-clerical, clerical or special grade. 'Support clerks' was not one of them. A correct categorisation was important as it determined the starting basic salaries of the temporary employees. By putting them under the category of 'support clerks', they would not be paid in accordance with the salary structures as specified in Appendix 1A and Appendix 1B of the collective agreement. Some of them were paid a flat rate of RM1,300 per month, which according to the appellant contravened article 14(2) of the collective agreement.

[4] The appellant then lodged a complaint to the Industrial Court but before the proceedings started, a new collective agreement effective 1 January 2006 to 31 December 2008 was signed between the appellant and Maybank. The hearing of the appellant's complaint subsequently proceeded in the Industrial Court, and on 28 May 2012 the Industrial Court gave an award in favour of the appellant, holding that Maybank was in breach of article 14 of the collective agreement.

[5] Dissatisfied with the decision, Maybank applied to the High Court by way of judicial review to quash the Industrial Court's award. The application was allowed by the learned judge and accordingly the award of the Industrial Court was quashed. Hence this appeal before us.

[6] In allowing the respondent's application, the learned judge found this to be 'a clear case where the Industrial Court took into account irrelevant facts, misdirected itself on the facts and the law and made such a perverse decision that no reasonable tribunal could have arrived at such a decision'. She gave three grounds for holding such view, namely:

(a) that the Industrial Court fell into error when it proceeded to interpret Appendix 1A and Appendix 1B of the collective agreement when this was not pleaded for interpretation by the appellant. The appellant's pleadings were premised on articles 3 and 14 of the collective agreement;

(b) that the Industrial Court had only made a finding that Maybank breached article 14 of the collective agreement without making any reference to article 3 of the collective agreement when the pleaded case of the appellant seemed to suggest that the two articles were inter-related;

(c) that Collective Agreement Cog No 12 of 2006 had been replaced by Collective Agreement Cog No 158 of 2008 which took effect on 1 January 2006. The employment of the temporary employees took effect on 1 January 2007. Although Collective Agreement Cog No 158 of 2008 had not come into force at the time of the filing of the statement of case on 18 April 2008, Collective Agreement Cog No 158 of 2008 had already come into force, and therefore the appellant should have amended its Form S to cite the correct collective agreement, that is, Collective Agreement Cog No 158 of 2008 but omitted to do so.

[7] In this appeal the appellant advanced only two grounds, namely:

(a) the learned judge was wrong in holding that the Industrial Court erred in proceeding to interpret Appendix 1A and Appendix 1B of the collective agreement on the ground that it was not pleaded by the appellant;

(b) the learned judge erred in holding that Collective Agreement Cog No 12 of 2006 had expired on the date of hearing and as such the appellant should have amended its statement of case to refer to the correct collective agreement, that is, Collective Agreement Cog No 158 of 2008.

[8] At the outset of the hearing, Maybank urged upon us not to entertain this appeal as there was no living issue before the court. The reason given was that Collective Agreement Cog No 12 of 2006 had expired on 31 December 2005 and was superseded by another collective agreement which had also expired on 31 December 2008, which in turn had been replaced by subsequent new collective agreements.

[9] It was argued that the appeal had been overtaken by events, rendering it purely academic. It was further argued that there was nothing to be gained by

hearing this appeal as many years had passed since the event giving rise to the action took place.

[10] We had given due consideration to the point raised and we were of the opinion that the issues raised in this appeal were legal points of general importance which should be ventilated before this court. Furthermore, the Industrial Court's award was quashed by the High Court at the instance of Maybank. It would not be fair in the circumstances to deny the appellant of the opportunity to argue for a reinstatement of the award.

[11] Having given serious consideration to the competing arguments, both written and oral, we were inclined to agree with the appellant's submissions, for reasons as follows:

(a) when the appellant pleaded for article 14 to be interpreted, it necessarily meant that Appendix 1A and Appendix 1B of the collective agreement were to be interpreted as well as these two appendices were intertwined with article 14. Article 14 cannot be interpreted in a vacuum, without considering Appendix 1A and Appendix 1B. Article 14(2) makes specific reference to Appendix 1A and Appendix 1B, which we reproduce again below for ease of reference:

> (2) The Bank shall pay every temporary employee employed in the category of non-clerical, clerical or special grade a monthly salary as prescribed in the Salary Structure as per Appendix 1A and Appendix 1B.

(b) when the Industrial Court interpreted Appendix 1A and Appendix 1B, in effect it was interpreting article 14. Therefore the Industrial Court did not commit any error of law as it was within the four corners of the appellant's pleaded case. In its award the Industrial Court had clearly held that the respondent failed to comply with article 14 of the collective agreement;

(c) when the appellant lodged the statutory Form S complaining to the Industrial Court of the breach by Maybank of the collective agreement, it was done on 18 February 2008 during which time Collective Agreement Cog No 158 of 2008 was not in existence yet. The collective agreement that was in existence then was Collective Agreement Cog No 12 of 2006. Collective Agreement Cog No 158 of 2008 only came into existence on 21 June 2008 and the effective date was backdated to 1 January 2006;

(d) r 24A of the Industrial Court Rules 1967 provides that Form S must be filed prior to commencing an action for the non-compliance of any collective agreement. Thus, when the appellant filed Form S seeking the court's interpretation of articles 3 and 14, it was based on the collective agreement which was in existence then, which was Collective Agreement Cog No 12 of 2006 and not Collective Agreement Cog No 158 of 2008;

(e) there was no need for the Form S to be amended as decided by the learned judge because the provisions that were to be interpreted were the provisions of the collective agreement which were in existence at that time, that is, Collective Agreement Cog No 12 of 2006. The appellant should not be expected to withdraw the Form S and file a new one with a new complaint under Collective Agreement Cog No 158 of 2008 just because Collective Agreement Cog No 12 of 2006 had been replaced;

(f) the issue concerned the interpretation of articles 3 and 14 of Collective Agreement Cog No 12 of 2006. Therefore the Industrial Court was not wrong in proceeding to decide that the respondent had breached Appendix 1A and Appendix 1B of Collective Agreement Cog No 12 of 2006.

[12] It was for these reasons that we unanimously allowed the appeal with costs of RM10,000 here and below to the appellant. Accordingly we set aside the High Court decision and restored the Industrial Court's award. The deposit was refunded to the appellant.

Appeal allowed with costs of RM10,000.

Reported by Afiq Mohamad Noor